In The

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1406

DANIEL CHAPMAN and JACQUE STOCKMAN
Appellants,

vs.

BEN MEIER, Secretary of State for the
State of North Dakota
Appellee

MOTION TO AFFIRM

ALLEN I. OLSON
Attorney General
State of North Dakota

PAUL M. SAND
First Assistant Attorney General
State Capitol
Bismarck, North Dakota 58501
Attorneys for Appellee

F. L. MESSENGER, INC., 306 Delta Street, Kansas City, Mo. 64106, 221-6300

INDEX

Table of Cases II

Table of Statutes II

Jurisdiction 2

Questions Presented 2

Argument 3

Population Variance by the Districts 5

Conclusion 10

Appendix—

Order of Three-Judge Court dated May 22, 1972, Giving Guidelines to Special Masters A1

Report of Special Master Richard Dobson A3

Dobson Plan A7

Certification of Secretary of State Ben Meier pertaining to the constitutional measure and referral of House Bill 1042 (Chapter 411, 1973 Session Laws) A8

Constitutional Proposal A9

House Bill 1042 (Chapter 411, 1973 Session Laws) A11

Section 3 of House Bill 1042 ..... A17

Legislative Plan of House Bill 1042 ..... A18

Certification by Secretary of State on the votes cast for the constitutional measure and referred statute A22

Certification by the county auditor of Grand Forks on the votes cast at the Air Force Base A23

Certification by the county auditor of Ward County on votes cast in Minot Air Base A24

TABLE OF CASES

Connor v. *Johnson*, 402 U.S. 690, 29 L. Ed. 2d 268 ..... 3, 5
Gaffney v. *Cummings*, ... U.S. ....., 37 L. Ed. 2d 298 .. 5, 8
Mahan v. *Howell*, 410 U.S. 315, 35 L. Ed. 2d 320 4
Minnesota State Senate v. *Beens*, 406 U.S. 187, 32 L. Ed. 2d 1 8
White v. *Regester*, 37 L. Ed. 2d 314, 412 U.S. 755 3

TABLE OF STATUTES

Article IV, Section 4, U.S. Constitution 9
House Bill 1042, Section 3 (Chapter 411, 1973 S.L.) 8
Section 27, North Dakota Constitution 3
28 U.S.C. 1253 2
28 U.S.C. 2281 2

In The

Supreme Court of the United States

OCTOBER TERM, 1973

No. .....

DANIEL CHAPMAN and JACQUE STOCKMAN,
Appellants,

vs.

BEN MEIER, Secretary of State for the
State of North Dakota,
Appellee.

MOTION TO AFFIRM

Pursuant to Rule 16, Paragraph 1 (c) of the Revised Rules of this Court, the Appellee, Ben Meier, Secretary of State for the State of North Dakota, moves that the Judgment of the District Court be affirmed on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

JURISDICTION

Appellee agrees with the Appellants that this Court has jurisdiction to consider the appeal under 28 U.S.C. 1253. Legal logic dictates that an Order of a three-judge court, replacing and standing in lieu of a state law, has the same standing as the state law being replaced in applying the provisions of 28 U.S.C. 2281. It would be a paradoxical anomaly to construe the provisions of 28 U.S.C. 2281 in a manner so as to authorize a single District Judge to override or overrule a three-judge District Court.

QUESTIONS PRESENTED

The statement of the questions presented appearing in the jurisdictional statement fairly represents the issues. However, the issue or question can be more accurately restated as follows: The primary question involved here is whether or not the court-fashioned plan meets the U.S. constitutional requirements.

ARGUMENT

Aside from the implications in the *Connor* v. *Johnson* case, 402 U.S. 690, 29 L. Ed. 2d 268, we are not aware of any decision which states, in essence, that there should be distinction involving constitutional matters based upon which branch of government fashions or develops a reapportionment plan. As to single member districts and multi member districts, this Court in *White* v. *Regester*, 412 U.S. 755, 37 L. Ed. 2d 314 (June 1973), said:

> "Plainly under our cases, multi member districts are not per se unconstitutional, nor are they necessarily unconstitutional when used in combination with single member districts in other parts of the State."

In *Connor*, the Court said:

> "We agree that when district courts are forced to fashion reapportionment plans, single member districts are preferable to large multi member districts as a general matter."

This statement is qualified twice, once by the term "preferable" and again with the term "as a general matter". The District Court had a right to construe this as not being an absolute or definitive directive and that it was more in the nature of an advisory observation or a strong suggestion.

The District Court had a right to take into account that historically, multi member districts for the House of Representatives has been the standard of this state. Prior to 1965 (Paulson plan II) single senatorial districts on a county basis prevailed (see 27 N.D. Constitution), but that was under the "little federal system" which no longer meets constitutional requirements. Beginning with 1965,

this state has maintained multi member districts for both the House and Senate.

An initiated constitutional amendment was proposed to the electorate of this state which would have provided for single member districts. It was rejected by a vote of 53,831 No to 43,178 Yes in a Special Election held on December 4, 1973. The Court, in fashioning the plan under consideration, was justified by taking into account the practices heretofore followed in addition to the rejection of the single member districts in the constitutional amendment. The District Court could also take judicial notice of the general composition of the North Dakota population, its economic ties, and the interrelation with each portion of the state together with the fact that North Dakota is an agricultural state even though through and by subclassification areas can be designated as rural or urban. Nevertheless, agriculture is predominant. With minor exceptions, all businesses are dependent upon agriculture for their success. Being the state does not have any identifiable groups which are constitutionally recognizable, there appears to be no need to create single member districts.

Boundary lines for political subdivisions (counties) and units of government (cities) certainly are entitled to considerable weight and adequate consideration in the formation of legislative districts.

The referral and defeat of House Bill 1042, the legislative reapportionment plan, at the same election in which the constitutional measure was defeated, strongly suggests that the fragmentation and violations of county lines was the underlying reason for the defeat. If the Legislature would have had the benefit of *Mahan* v. *Howell*, 410 U.S. 315, 35 L. Ed. 2d 320, the plan most likely would have been different and so would the election results.

The North Dakota ballot is not designed for block voting. Each voter at the general election may cast a vote for any senator or representative regardless of party affiliation or nomination.

Single member districts, because of changes in population, will periodically require more substantial changes in the composition of legislative districts and will destroy voter identification with the district which will result in apathy, which can be ill afforded.

It would not appear proper for the courts to allow themselves to be used by individuals to accomplish political objectives, not constitutionally required, which have not been obtainable by the individuals through the political process. The present challenge was instituted on the heels of the announcement of *Connor* v. *Johnson*.

POPULATION VARIANCE BY THE DISTRICTS

Equal representation involves more than mere mathematics or a raw nose count. It involves tangibles and intangibles which are somewhat difficult to define with reasonable certainty or to assess a weight factor to each so as to permit them to be used universally and generally. Above all, it is more than mere population. The Supreme Court, in *Gaffney* v. *Cummings*, ... U.S. ....., 37 L. Ed. 2d 298 (June 1973) said:

> "What is more, it must be recognized that total population, even if absolutely accurate as to each district when taken, is nevertheless not a talismanic measure of the weight of a person's vote under the later adopted reapportionment plan."

The major "cities" in North Dakota have been growing in population more so than other areas. The growth

since 1970 probably was sufficient so that the variance may be constitutionally impermissible if mathematical equality were constitutionally required. It is a known fact that cities do not grow substantially in the same proportion in all directions. Dividing a city into single member districts would further accentuate the problem. The current multi member plan permits absorption of growth regardless of the direction. If there is a change in population, it would be allocated to the entire city under multi member districts rather than to the area involved if there were single member districts.

We must also be cognizant of the difficulty of attempting to maintain the geographic lines of political subdivisions and at the same time recognize population as a major factor in representation. The current plan has a variance of over-representation in District 11 amounting to 11.43 percent and an under-representation in District 4 equal to 8.71 percent which makes a total variation of 20.14 percent. However, percentages in themselves can be frightening. The actual population variance is not that great. The average under-represented equals 4.25 percent. The average over-represented equals 6.03 percent. Of the under-represented districts, 11 are above the average of 4.29 and 10 are below that average. Of the districts over-represented, the average is 6.03. Eight are above the average and nine are below the average.

The District Court, in the Order dated May 22, 1972, gave directions to the masters with the following guidelines:

A. The commission shall try to conform new legislative districts to the existing districts.

B. The commission shall not substantially change the size of the Legislature.

C. Natural geographic boundaries shall be observed.

D. Existing political subdivision lines should be observed insofar as possible.

E. In the event the commission should find that it is unnecessary to substantially alter any one or more of the legislative districts presently defined, then it must consider and make recommendations relative to whether or not the incumbent senator or senators, whose term does not expire at the end of this year, must nevertheless stand for election in 1972.

We must assume that the masters adhered to the guidelines announced by the Court. The Court adopted what is known as the Dobson plan. Mr. Richard R. Dobson submitted a memorandum to the Court in which he explains why the Plan submitted was constituted as submitted. See Appendix A3.

The explanation clearly shows that a reasonable effort was made to continue the boundaries of existing districts as closely as possible. The explanation also discloses that the Plan took into account natural geographic boundaries such as the Missouri River and arterial roads with the observation that it was not deemed necessary for a person to travel outside of one's district in going from one part of it to another. An effort was made to prevent violating existing county lines. The master reported that the greatest objection or complaints related to the breaking of county lines particularly in smaller rural counties. He stated "counties with very small populations should not be split because they are thereby rendered politically powerless. It is a form of de facto disenfranchisement." The master made the further observation with which we must agree that the deviation from the average popula-

tion per district decreases if many county lines are violated and increases if only a few county lines are split. This is the salient factor to be considered in this plan. Population variance can be narrowed at the expense of county lines. In a state with a small population as North Dakota, we should give equal, if not more consideration to the preservation of governmental political subdivisions, governing units, and county lines.

The size of the Legislature, the number of legislative districts, and the population in each district are factors to be considered. The larger the population in each district the more closely boundary lines of political subdivisions can be followed. The smaller the population of a district the greater the likelihood of artificial boundary lines or higher variance (this concept was recognized in Justice Stuart's dissenting opinion in *Minnesota State Senate* v. *Beens*, 406 U.S. 187, 32 L. Ed. 2d 1. This is also true in North Dakota and the concept militates in favor of rather than against multi member districts particularly where population assigned to each senator or representative is small, as it is in North Dakota.

The North Dakota Legislature was aware that "census persons are not voters" (*Gaffney* v. *Cummings*) and made some findings in Section 3 of House Bill 1042 (Chapter 411, 1973 Session Laws) on the subject. See Appendix A9. The number of voters in Grand Forks and Minot Air Bases compared to the census count bears this out.

In the Grand Forks Air Base Primary Election, September 5, 1972, 43 voted. In the General Election in November, 601 voted. In the Special Election of December 4, 1973, 5 voted. The Air Base has a population of 10,474. Bureau of Census PC (1) A 36 ND.

In the Air Base at Minot in the Presidential Election, 1972, 479 voted. At the special election January 5, 1973,

19 voted. At the special election December 4, 1973, 6 voted. The Minot Air Base has a population of 12,077 according to the Bureau of Census report.

The difficult and complex processes of reapportionment takes into account many factors. Each factor and the weight given to each may vary substantially from state to state depending upon the situation in each state. The standards should not be so rigid as to make it too difficult or politically impracticable to be performed by the Legislature and thereby to a degree deny to the states a Republican form of government as guaranteed by Article IV Section 4 of the U.S. Constitution.

We suggest that the courts be required to perform only the de minimis to make a plan valid rather than develop a theoretical concept which will not in reality or politically improve representation in its fullest sense.

The revision of legislative districts even when constitutionally required, creates loss of voter identification with the district and potential candidates which may be as harmful or more so than population variance or deviation in a representative form of government. Revision for sake of refinement should not be the rule except to meet constitutional requirements.

The District Court was and is familiar with the population, geography, and the total government picture of the State of North Dakota. Some of these items are difficult, if not impossible, to reduce to absolutes by extraction, distillation, or analysis, or any other method, but nevertheless are entitled to consideration on the complex question of representation. The Court took these many factors into consideration as has been illustrated by the Memorandum Opinion and Order of Chief Judge Benson filed January 30, 1974. The well reasoned Opinion and Order

with the authorities cited therein succinctly states the position of the Appellee, and any further argument would be repetitious.

CONCLUSION

The Dobson plan is not contrary to the directives of the Court and does not offend the Constitution of the United States, and for this reason the Court should affirm the reapportionment plan established by the District Court.

Dated this 10th day of April, 1974.

Respectfully submitted,

ALLEN I. OLSON
Attorney General
State of North Dakota

By: PAUL M. SAND
First Assistant Attorney General
State Capitol
Bismarck, North Dakota 58501
Attorneys for Appellee

APPENDIX

ORDER OF MAY 22, 1972

Jurisdiction of this controversy rests in this Court by virtue of Title 28, Sections 1331, 1343, and 2281 of the United States Code.

Following oral argument in Fargo, North Dakota, on May 18, 1972, before this District Court of Three Judges, we took this matter under advisement.

Having now considered those arguments, together with the pleadings, affidavits on file and other pertinent documents tendered, we find and conclude as follows:

1. The plaintiffs have made a legally sufficient showing that the existing legislative apportionment scheme in the State of North Dakota fails to meet Federal Constitutional standards.

2. This Court shall attempt to reapportion the legislative districts in the State of North Dakota so as to conform to Federal Constitutional standards, within such time as to be effective for the 1972 primary and general elections.

3. For the purpose of assisting the Court in this endeavor, we appoint Mr. R. R. Smith of Grand Forks, North Dakota, Mr. Richard Dobson of Minot, North Dakota, and Mr. Thomas K. Ostenson of Fargo, North Dakota, as Special Masters, to serve as a Commission under the supervision and direction of this Court. The Commission shall study, formulate and present to us, within thirty days from date hereof, an apportionment plan. In this regard, we offer the following guidelines:

a. The Commission shall try to conform new legislative districts to the existing districts.

b. The Commission shall not substantially change the size of the Legislature.

c. Natural geographic barriers shall be observed.

d. Existing political subdivision lines should be observed, insofar as possible.

e. In the event the Commission should find that it is unnecessary to substantially alter any one or more of the legislative districts presently defined, then it must consider and make recommendations relative to whether or not the incumbent senator or senators, whose term does not expire at the end of this year, must nevertheless stand for election in 1972.

4. We have considered the matter of "multi-member" districts and conclude there is insufficient time prior to the 1972 elections to fully explore and resolve the issues involved. The matter of "multi-member" districts will be studied in depth by the Commission, and the results of that study be made available to us.

5. The burden of paying the necessary expenses incurred in this matter is a proper one to be borne by the State of North Dakota. It is therefore our request that the State of North Dakota, through its Emergency Commission or some other appropriate agency, make available to this Court the initial sum of Five Thousand Dollars ($5,000.00) for the purpose of carrying out the directives outlined herein, the expenditure of such funds to be made only upon our direction.

6. We direct Mr. Roger E. Persinger of Bismarck, North Dakota, an officer of this Court, to advise, assist, and direct the Commission in its work.

IT IS SO ORDERED.

Dated at Fargo, North Dakota this 22nd day of May, 1972.

s/s Myron H. Bright
United States Circuit Judge

s/s Paul Benson
Chief Judge, United States District Court

s/s Bruce M. Van Sickle
Judge, United States District Court

REPORT OF SPECIAL MASTER RICHARD DOBSON

I. INTRODUCTION

This plan to reapportion the North Dakota Legislature would create 41 districts for the election of 51 senators and 102 representatives. The number of multi-senator districts would remain at five.

II. DISTRICTS

The proposed districts conform, both in boundaries and in numbering, quite closely to the existing districts.

III. SIZE

The size of the Senate would be increased by two members and the House of Representatives by four. I believe this is necessary and fair because the plan includes Grand Forks and Minot Air Force bases with their sizable,

transient and largely non-voting populations. If the current size was retained, other areas of North Dakota would, in effect lose two senators and four representatives simply because of the existence of the air bases.

IV. GEOGRAPHICAL BARRIERS

The plan observes natural geographical barriers, such as the Missouri River. Also, and I feel this is important, every district is connected with good arterial roads. It should not be necessary to travel outside of one's district in going from one part of it to another.

V. POLITICAL SUBDIVISIONS

In the formation of districts, parts of 10 counties are attached to an adjoining county or counties. However, in three instances (Burleigh, Ward and Williams), no real violence is done to county lines because an urban district is sealed off and the rural portion of the county is attached to a neighboring rural county. Three other counties which are divided (Barnes, Richland and Walsh) have traditionally been split into two districts. Thus, only four counties (McHenry, Cass, Morton and Stark) suffer any damage in the districting.

In this connection, it should be noted that the greatest complaints about the existing apportionment were voiced over the breaking of county lines, particularly in smaller rural counties. Counties with very small populations should not be split because they are thereby rendered politically powerless. It is a form of de facto disenfranchisement.

VI. POPULATION

As a general rule, deviation from the average population per district decreases if many county lines are violated and increases if only a few counties are split. A salient feature of this plan in comparison to the 1965 apportionment is that it would reduce both population deviation and divided counties. The ratio of the most populous district to the least would be cut from 1.25-1 to 1.23-1 and the number of split counties would be trimmed from 13 to 10.

In its order of May 22, 1972, the Court did not address itself to the matter of population deviation. However, I feel that anything in the neighborhood of 1.25-1 is constitutionally permissible in a rural state like North Dakota. It results, in most districts, in a deviation of only a few hundred persons from the mean. Such a ratio probably would be excessive in a large urban state because it would result in deviations running into tens of thousands.

VII. THE 13TH DISTRICT

The 13th District in this plan would consist of West Fargo, West Fargo Industrial Park, Barnes and Reed Townships and the Ninth, Tenth, and Eleventh precincts of Fargo. It was created to recognize the growth of West Fargo and its environs. If desired, however, West Fargo could remain in the 21st District, which would then be entitled to five senators and ten representatives. In that case, I would assign the district number "13" to the Grand Forks County floterial district.

VIII. FLOTERIAL DISTRICTS

Once the decision has been made to include the populations of the two air bases for apportionment purposes, the question arises of where to assign this population. Should the air base populations be lumped into urban districts? Or should the rural areas receive the extra representation which will result from counting the air bases?

Or should Minot Air Force Base be given to the Minot urban district and Grand Forks Air Force Base to the Grand Forks County rural district? Or vice versa?

It seems to me that the only fair way to resolve this question is to create floterial districts so that all the people in the air base areas can take part in the election of the extra legislators. Thus everyone residing in the Third and Fifth districts would participate in the election of one senator and two representatives from the 40th District; while the 18th and 19th districts would constitute the other floterial district, the 41st. As a matter of practical politics, it may be expected that both urban and rural legislators will be slated and elected from the floterial districts.

IX. SENATORS

Because the districts in this plan conform rather closely to existing districts, I would recommend that only five of the 26 senators elected in 1970 for four-year terms be ordered to stand for re-election this year. They are Senators Christensen, Swedlund, Doherty, Just and Chesrown. Christensen was elected from the Third District, Swedlund from the Seventh, Doherty from the 13th, Just from the 27th, and Chesrown from the 31st. Christenson would be placed in the Third, Swedlund in the Seventh, Doherty in the 12th, Just in the 28th and Chesrown in the 30th. Therefore, Christensen and Swedlund would run for two-year terms while the others would run for four-year terms.

Also, it would be necessary to elect senators for two-year terms from the 13th, 31st and 41st districts and a senator for a four-year term from the 40th. All other districts presently have the requisite number of incumbents.

Richard R. Dobson
Special Master

"DOBSON PLAN"

No.	District	Pop.	Per Sen.	Sens.	Reps.
1.	Williston Area	12,250	12,250	1	2
2.	Divide, rural Williams	11,615	11,615	1	2
3.	Renville, rural Ward	12,481	12,481	1	2
4.	Burke, Mountrail	13,176	13,176	1	2
5.	Minot area	37,831	12,610	3	6
6.	Bottineau, part McHenry	11,840	11,840	1	2
7.	Pierce, part McHenry	12,956	12,956	1	2
8.	McLean	11,251	11,251	1	2
9.	Rolette	11,549	11,549	1	2
10.	Cavalier, Towner	12,858	12,858	1	2
11.	Pembina	10,728	10,728	1	2
12.	Benson, Eddy	12,349	12,349	1	2
13.	West Fargo area	11,275	11,275	1	2
14.	Foster, Wells	12,679	12,679	1	2
15.	Ramsey	12,915	12,915	1	2
16.	Part Walsh	11,296	11,296	1	2
17.	Nelson, part Walsh	10,731	10,731	1	2
18.	Grand Forks City	39,008	13,003	3	6
19.	Rural Grand Forks Co.	11,620	11,620	1	2
20.	Traill, part Cass	11,534	11,534	1	2
21.	Fargo area	48,967	12,242	4	8
22.	Part Cass	11,448	11,448	1	2
23.	Griggs, Steele, part Barnes	11,007	11,007	1	2
24.	Part Barnes	11,598	11,598	1	2
25.	Part Richland	12,799	12,799	1	2
26.	Dickey, Sargent	12,913	12,913	1	2
27.	Ransom, part Richland	12,392	12,392	1	2

No.	District	Pop.	Per Sen.	Sens.	Reps.
28.	LaMoure, Logan	11,362	11,362	1	2
29.	Stutsman	23,550	11,775	2	4
30.	Emmons, McIntosh	12,745	12,745	1	2
31.	Kidder, Sheridan, rural Burleigh	12,712	12,712	1	2
32.	Bismarck area	35,596	11,865	3	6
33.	Mercer, Oliver, part Morton	13,075	13,075	1	2
34.	Mandan area	12,215	12,215	1	2
35.	Grant, Sioux, part Morton	12,158	12,158	1	2
36.	Dunn, McKenzie	11,021	11,021	1	2
37.	Dickinson	12,405	12,405	1	2
38.	Adams, Hettinger, part Stark	12,566	12,566	1	2
39.	Billings, Bowman, Golden Valley Slope, part Stark	12,743	12,743	1	2
40.	Renville, Ward	-----floterial-----		1	2
41.	Grand Forks Co.	-----floterial-----		1	2

Description not included here

DEPARTMENT OF STATE

Bismarck, North Dakota

TO COUNTY AUDITORS:

In accordance with Sections 16-01-07 and 16-11-07 (as amended) of the North Dakota Century Code, I do hereby certify that the following is the complete text of the Constitutional Measure (amendment) and the Referred Statute (measure) that will be submitted to the voters at the special election to be held on Tuesday, December 4, 1973. The publication of the complete text of the Constitutional Measure (amendment) and the Referred Statute (measure) shall be in columns of six point light face type with underscored words to be of six point bold face type.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Dakota at the Capitol in the City of Bismarck, this 25th day of October, 1973.

Great Seal

/s/ Ben Meier
Secretary of State

Constitutional Measure (amendment)
The Bold Face Print is New Material

No. 1

An initiated constitutional amendment to secure equal representation by establishing individual Senate districts and House sub-districts, to authorize a commission to determine the number of legislators within limits and to apportion the state into individual Senate districts and House sub-districts, to establish the method for selection of the commission and to provide for its operation and action and for judicial review of its plan, and to repeal present sections 26, 29, 32, 35, and 214 of the Constitution pertaining thereto.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

1. The state shall be divided into as many districts as there are members of the senate, and each district shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable. Each senate district shall be divided into two house sub-districts, as nearly equal in

population as practicable, which shall each elect one representative.

2. The senate shall be composed of not less than 40 members, nor more than 50 members. The house of representatives shall be composed of members equalling in number twice the number of senators.

3. Within 30 days after the effective date of this provision, eight members of a commission of citizens, none of whom may be legislators, shall be selected as follows: The majority and minority leaders of each house in the preceding session of the Legislature shall each designate two commissioners, by filing a certificate of designation with the Secretary of State. The Secretary of State shall promptly call and convene the first meeting of the eight commissioners so designated and a majority of the eight commissioners shall select the ninth member, who shall be chairman of the commission.

4. It shall be the duty of the commission to determine the number of senators and representatives and to apportion the state into senate districts and house sub-districts. A like commission shall be selected and convened in the same manner, by designation of the eight commissioners within 30 days after the first regular session of the legislature after each federal decennial population census after the adoption of his provision; and such commission shall perform the same duties.

5. The commission shall determine its own procedures, shall meet at times and places, may hold public hearings, may survey population distributions, and may employ assistance, as it may determine. Each commissioner shall be paid per diem and expenses for attending meetings equal to that of a legislator at the legislative session preceding his designation as commissioner. All costs and expenses of the

commission shall be paid by the State Treasurer out of any general funds of the state, upon certification by the chairman of the commission.

6. Upon action by a majority of its members and at least 120 days prior to the first primary for nomination of legislative candidates after the commission is selected, the commission shall complete its legislative plan and file it with the Secretary of State. The plan shall thereupon become law and the commission is dissolved. The Supreme Court of North Dakota, exercising original jurisdiction, may review the plan and, if the plan or any part of it is invalid, may direct the commission to reconvene and file a new plan within a stated time.

7. Sections 26, 29, 32, 35, and 214 of the Constitution of North Dakota are hereby repealed.

Referred Statute (measure)

No. 1

An act to provide for state legislative apportionment, and to repeal Sections 54-03-01, 54-03-01.1, 54-03-01.2, 54-03-01.3, 54-03-01.4 of the North Dakota Century Code, and Chapter 338 of the North Dakota Session Laws of 1965, relating to state legislative apportionment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. STATE LEGISLATIVE APPORTIONMENT.) Except as otherwise provided in this section, each legislative district shall be entitled to one senator and two representatives who shall be elected at the general election in 1974. The legislative districts of the state shall be formed as follows:

1. The first district shall consists of the city of Williston, and Williston, Trenton, Hardscrabble, and Buford townships in Williams County.

2. The second district shall consist of Divide County, Forthun, Short Creek, Fay, and Keller townships in Burke County, and all of Williams County, except that portion contained in the first district.

3. The third district shall consist of Renville County, and Ward County, except those portions contained in the fifth and eighth districts.

4. The fourth district shall consist of Mountrail County, and Burke County, except that portion contained in the second district.

5. The fifth district shall consist of the city of Minot, the Minot Air Base, and Harrison, Nedrose, Surrey, Sundre, Eureka, and Waterford townships in Ward County, and shall be entitled to four senators and eight representatives.

6. The sixth district shall consist of Bottineau County, and Pratt, Deep River, Meadow, Mouse River, Willow Creek, Grilley, Little Deep, Layton, Bantry, Normal, Deering, Saline, Gilmore, Wager, Kottle Valley, Egg Creek, Riga, Denbigh, Newport, and Berwick townships, and the unorganized territory designated as townships 157-75, 157-76, and 158-76 in McHenry County.

7. The seventh district shall consist of Pierce County, and McHenry County, except that portion contained in the sixth district.

8. The eighth district shall consist of the city of Wilton, McLean County, and Hiddenwood, Ryder, Cameron, Spring Lake, Rushville, Iota Flat, and Greely townships in Ward County.

9. The ninth district shall consist of Rolette County, and Picton, Sidney, Smith, Mount View, Armoordale, Rock Lake, Monroe, and Howell townships in Towner County.

10. The tenth district shall consist of Cavalier County, Towner County, except that portion contained in the ninth district, and Northfield, Prospect, and Highland Center townships in Ramsey County.

11. The eleventh district shall consist of Pembina County, and Kinloss, Silvesta, Tiber, Lampton, Dundee, and Glenwood townships in Walsh County.

12. The twelfth district shall consist of Benson and Eddy Counties.

13. The thirteenth district shall consist of Sheridan County, Kidder County, Burleigh County, except those portions contained in the eighth and thirtieth districts, and Bull Moose, Chaseley, Lynn and Silver Lake townships in Wells County.

14. The fourteenth district shall consist of Foster County, and Wells County, except that portion contained in the thirteenth district.

15. The fifteenth district shall consist of Ramsey County, except that portion contained in the tenth district.

16. The sixteenth district shall consist of Walsh County, except those portions contained in the eleventh and nineteenth districts.

17. The seventeenth district shall consist of McIntosh and Dickey Counties.

18. The eighteenth district shall consist of the city of Grand Forks, the Grand Forks Air Base, and Grand Forks, Rye, Blooming, and Mekinock townships in Grand Forks County, and shall be entitled to four senators and eight representatives.

19. The nineteenth district shall consist of Grand Forks County, except that portion contained in the eighteenth district, and Sauter, Perth, Cleveland, Medford, Eden, Ops, Forest River, Ardoch, and Walshville townships in Walsh County.

20. The twentieth district shall consist of Traill County, Beaver Creek, Newburgh, Golden Lake, Enger, Sherbrooke, Primrose, Hugo, Edendale, Colgate, and Broadlawn townships in Steele County, and Hunter, Bell, Kinyon, Noble, Gardner, and Wiser townships in Cass County.

21. The twenty-first district shall consist of the cities of Fargo and West Fargo, and Reed Fargo, and Barnes townships in Cass County, and shall be entitled to five senators and ten representatives.

22. The twenty-second district shall consist of Cass County, except those portions contained in the twentieth and twenty-first districts, and Nelson, Norma, Binghampton, Oakhill, Thordenskjold, and Raritan townships in Barnes County.

23. The twenty-third district shall consist of Nelson County, Griggs County, and Steele County, except that portion contained in the twentieth district.

24. The twenty-fourth district shall consist of Barnes County, except those portions contained in the twenty-second and twenty-ninth district.

25. The twenty-fifth district shall consist of Antelope, Ibsen, Dwight, Barney, Mooreton, Center, Belford, Brandenburg, Summit, Brightwood, Waldo, Devillo, Elma, Greendale, LaMars, and Fairmount townships in Richland County.

26. The twenty-sixth district shall consist of Sargent County, Richland County, except that portion contained in the twenty-fifth district, and Coburn, Shenford, Owego, Scoville, Sandown, Sydna, and Rosemeade townships in Ransom County.

27. The twenty-seventh district shall consist of LaMoure County, except that portion contained in the twenty-eighth district, and Ransom County, except that portion contained in the twenty-sixth district.

28. The twenty-eighth district shall consist of Emmons County, Logan County, and Glen, Raney, Swede, and Norden townships in LaMoure County.

29. The twenty-ninth district shall consist of Stutsman County, and Pierce, Uxbridge, Brimer, Eckelson, Mansfield, Meadow Lake, and Greenland townships in Barnes County, and shall be entitled to two senators and four representatives.

30. The thirtieth district shall consist of the city of Bismarck, and Hay Creek, Gibbs, Apple Creek, and Missouri townships, and the unorganized territory designated as townships 137-80 and 138-80 in Burleigh County, and shall be entitled to three senators and six representatives.

31. The thirty-first district shall consist of the city of Mandan, Engelter township, and the unorganized territory designed as townships 139-81, 139-82, 139-83, and 139-84 in Morton County.

32. The thirty-second district shall consist of Grant County, Sioux County, and the unorganized territory designated as townships 133-82, 134-79, 134-80, 134-81, 134-82, 134-83, 134-84, 135-79, 135-80, 135-81, 135-82, 135-83, 135-84, 136-79, 136-80, 136-81, 136-82, 136-83, 136-84, 137-79, 137-80, 137-81, 137-82, 137-83, 137-84, 137-85, 137-86,

137-87, 138-80, 138-81, 138-82, 138-83, 138-84, 138-85, 138-86, 138-87, 138-88, 138-89, and 138-90 in Morton County.

33. The thirty-third district shall consist of Oliver County, Morton County, except those portions contained in the thirty-first and thirty-second districts, and Mercer County, except that portion contained in the thirty-fourth district.

34. The thirty-fourth district shall consist of McKenzie County, Dunn County, Billings County, except that portion contained in the thirty-seventh district, and the unorganized territory designated as townships 145-89, 145-90, 146-89, 146-90, 147-89, and 147-90 in Mercer County.

35. The thirty-fifth district shall consist of Hettinger County and Stark County, except that portion contained in the thirty-sixth district.

36. The thirty-sixth district shall consist of the city of Dickinson.

37. The thirty-seventh district shall consist of Golden Valley County, Slope County, Bowman County, Adams County, and Medora township, and the unorganized territory designated as townships 137-100, 137-101, 137-102, 138-100, 138-101, 138-102, 139-100, 139-101, 139-102, 140-100, and 140-101 in Billings County.

SECTION 2. NUMBERING LEGISLATIVE DISTRICTS.—CLASSES OF SENATORS TO PROVIDE STAGGERED TERMS.) Senators shall be divided into two classes: those elected in legislative districts designated by even numbers shall constitute one class, and those elected in legislative districts designated by odd numbers shall constitute the other class. The senators of one class elected in the year 1974 shall hold their office for two years, those of the other class elected in the year 1974

shall hold their office for four years, and the determination of which class shall be elected for four years and which class shall be elected for two years shall be by lot. The president of the senate shall perform the lot in the presence of the majority and minority floor leaders of the senate and shall certify in writing the results of such lot to the secretary of state within thirty days after the effective date of this Act.

SECTION 3. LEGISLATIVE FINDING.) The legislature was cognizant of and has taken into consideration the methods and procedures employed by the census bureau in taking the census and the creation of enumeration districts, which do not necessarily coincide with the geographic boundaries of political sub-divisions such as townships and smaller cities. The legislature in numerous instances was required to interpolate and calculate the population in rural areas, including townships, on information available. It is also known that many persons maintained a dual residence, one for voting purposes and one where they physically resided. It has been common practice for many persons upon reaching semiretirement age or upon retiring, to locate in a city, but retain their residence on a farm. However, for census purposes, they were listed in the city's population. Because of these items, mathematical exactness or precision in population is impossible, and because of the cost and effort to produce the necessary information to accomplish this, it is impractical.

The legislature also recognizes and has taken into consideration the following statistical information including district population, population per senator, and population variance above and below the average population per senator:

Legislative District	Counties	Number of Senators	Total Population	Population Per Senator	Population Variance
1.	Pt. Williams	1	12,436	12,436	+0.6
2.	Divide, Pt. Burke, Pt. Williams	1	12,202	12,202	-1.2
3.	Renville, Pt. Ward	1	12,325	12,325	-0.2
4.	Mountrail, Pt. Burke	1	12,403	12,403	+0.4
5.	Pt. Ward	4	49,147	12,287	-0.6
6.	Bottineau, Pt. McHenry	1	12,427	12,427	+0.6
7.	Pierce, Pt. McHenry	1	12,369	12,369	+0.1
8.	McLean, Pt. Burleigh, Pt. Ward	1	12,266	12,266	-0.7
9.	Rolette, Pt. Towner	1	12,288	12,288	-0.5
10.	Cavalier, Pt. Towner, Pt. Ramsey	1	12,505	12,505	+1.2
11.	Pembina, Pt. Walsh	1	12,588	12,588	+1.9
12.	Benson, Eddy	1	12,348	12,348	-0.1
13.	Sheridan, Kidder, Pt. Burleigh, Pt. Wells	1	12,082	12,082	-2.2

Legislative District	Counties	Number of Senators	Total Population	Population Per Senator	Population Variance
14.	Foster, Pt. Wells	1	12,183	12,183	-1.4
15.	Pt. Ramsey	1	12,529	12,529	+1.4
16.	Pt. Walsh	1	12,588	12,588	+1.9
17.	McIntosh, Dickey	1	12,521	12,521	+1.3
18.	Pt. Grand Forks	4	50,821	12,705	+2.8
19.	Pt. Grand Forks, Pt. Walsh	1	12,084	12,084	-2.2
20.	Traill, Pt. Cass	1	12,191	12,191	-1.3
21.	Pt. Cass	5	61,157	12,231	-1.0
22.	Pt. Cass, Pt. Barnes	1	12,233	12,233	-1.0
23.	Nelson, Griggs, Pt. Steele	1	12,501	12,501	+1.2
24.	Pt. Barnes	1	12,336	12,336	-0.2
25.	Pt. Richland	1	12,389	12,389	+0.3
26.	Sargent, Pt. Richland, Pt. Ransom	1	12,375	12,375	+0.2
27.	Pt. Ransom, Pt. LaMoure	1	12,379	12,379	+0.2
28.	Emmons, Logan, Pt. LaMoure	1	12,547	12,547	+1.6

Legislative District	Counties	Number of Senators	Total Population	Population Per Senator	Population Variance
29.	Stutsman, Pt. Barnes	2	24,734	12,367	+0.1
30.	Pt. Burleigh	3	36,623	12,208	-1.2
31.	Pt. Morton	1	12,763	12,763	+3.3
32.	Grant, Sioux, Pt. Morton	1	12,344	12,233	-0.1
33.	Oliver, Pt. Morton, Pt. Mercer	1	11,923	11,923	-3.5
34.	McKenzie, Dunn, Pt. Billings, Pt. Mercer	1	12,154	12,154	-1.6
35.	Hettinger, Pt. Stark	1	12,283	12,283	-0.6
36.	Pt. Stark	1	12,405	12,405	+0.4
37.	Golden Valley, Slope, Bowman, Adams, Pt. Billings	1	12,312	12,312	-0.3
	Ideal population per district (617,761 divided by 50)				12,355
	Largest district per senator				12,763
	Smallest district per senator				11,923
	Deviation in percent, largest district				+3.3
	Deviation in percent, smallest district				-3.5
	Number of senators (each district to be represented in the house by two members per senator)				50

SECTION 4. LEGISLATIVE COMMENDATION.) The legislature recognizes the diligent efforts of the members of the legislative council's special committee on reapportionment, and commends the bipartisan committee consisting of senators Gail Hernett, chairman, L. D. Christensen, and Francis J. Butler; representatives Richard J. Backes, Donald Giffey, and I. O. Hensrud; and citizen members, Messrs. William Greenagel, Leo Stein, Tom Roney, Ted Hardmeyer, and Ernest Johnson for formulating and selecting a reapportionment plan which met with unanimous approval of the members present at the final committee meeting.

SECTION 5. REPEAL.) Sections 54-03-01, 54-03-01.1, 54-03-01.2, 54-03-01.3, and 54-03-01.4 of the 1965 Supplement to the North Dakota Century Code, and Chapter 338 of the 1965 North Dakota Session Laws are hereby repealed.

No. 12135

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA

TO ALL TO WHOM THESE PRESENTS SHALL COME,

I, Ben Meier, Secretary of State of the State of North Dakota, do hereby certify that:

The Special Election held on December 4, 1973, resulted in the following votes cast on the Constitutional Measure (amendment) and the Referred Statute (measure).

CONSTITUTIONAL MEASURE (amendment)

Number of votes cast YES—43,178: NO—53,831

REFERRED STATUTE (measure)

Number of votes cast YES—44,363: NO—50,729.

The above results were established by the State Canvassing Board which convened on December 14, 1973 and have been recorded by me as provided for by law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State at the Capitol in the City of Bismarck, this 17th day of December, A.D., 1973.

/s/ Ben Meier
Secretary of State

GRAND FORKS COUNTY
NORTH DAKOTA

CERTIFICATE

State of North Dakota)
) ss
County of Grand Forks)

I hereby certify that the Votes cast at the Grand Forks Air Force Base at the Primary Election held on the 5th day of September, 1972 were 43; at the general election held on the 7th day of November, 1972 were 601 votes; and at the Special Election held on the 4th day of December, 1973 were 5 votes according to the Official Abstract of Votes for said elections.

Given under my hand and seal this 18th day of December, 1973.

/s/ C. E. Overland
County Auditor
Grand Forks County
North Dakota

Seal

WARD COUNTY, NORTH DAKOTA
AUDITOR'S OFFICE
MINOT, NORTH DAKOTA

STATE OF NORTH DAKOTA

COUNTY OF WARD

I, Gladys C. Pederson, County Auditor in and for Ward County, North Dakota, do hereby certify that the Minot Air Force Base is located partly in Tatman Township and partly in Waterford Township of Ward County, which civil townships constitute two of the voting precincts in Ward County, and that said townships are a part of the 3rd Legislative District excepting for the areas consisting of the Air Base, which Air Base area constitutes a part of the 5th Legislative District.

I do further certify that according to the records in my office the legislative vote in the townships of Tatman and Waterford for the 5th Legislative candidates (indicating the military vote cast) reveals the following vote:

Election	Tatman	Waterford
Presidential of 11/7/72	256	223
Special 5th Dist. of 1/5/73	12	7
Special Election of 12/4/73	2	4

Dated at Minot, North Dakota this 18th day of December, 1973.

/s/ Gladys C. Pederson
County Auditor